IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 347 of 2006.

Decided on : 6.11.2006.

Parvati Devi & ors. **…..Appellants.**

VERSUS

Charan Dass **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. G.R.Palsra, Advocate.

For the Respondent : Mr. Sanjeev Kuthiala, Advocate with Ms. Ambika Kotwal, Advocate.

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. Appellants- plaintiffs filed a suit for declaration that the decree passed in favour of respondent's predecessor Chinhu, in Civil Suit No. 99 of 1991, was the result of fraud and that as a matter of fact, they were earlier the tenants and now owners in possession of suit land, measuring 1 Bigha, 0 Biswa, 19 Biswansis (1-0-19), bearing khasra No. 869, situate in village Mohal Kehar, Illaqua Rajgarh, Tehsil Sadar, District Mandi and the decree obtained in the earlier suit No. 99 of 1991, from the Court of Sub Judge Ist Class, Court No.III, Mandi, did not affect their title, it having been obtained by fraud.

Whether the reporters of the local papers may be allowed to see the Judgment?

3. Defendant- respondent contested the suit and denied that any fraud had been played upon the appellants-plaintiffs in the earlier suit. He stated that the appellants- plaintiffs were duly represented by a counsel in the earlier suit, which was filed by defendant's father, seeking permanent prohibitory injunction restraining the appellants- plaintiffs from interfering in his possession over the suit land.

4. I have heard the learned counsel for the appellants and perused the record. A perusal of the record shows that respondent's father Chinhu filed a suit in the year 1991, seeking issuance of permanent prohibitory injunction, restraining the appellants- plaintiffs from causing any interference in his possession over the suit land. Appellants- plaintiffs in their written statement, copy of which is available on the record of the trial court and duly proved, filed in reply to the suit of 1991, denied that they had been causing any interference in the possession of the father of the respondent-defendant over the suit land. They did not claim any right, title or interest in the suit land, though they did contest the suit for grant of injunction against them, on the ground that they had not been causing any interference.

5. In view of the above stated position, it does not lie in the mouth of the appellants-plaintiffs now to claim that in fact they were earlier non-occupancy tenants in respect of the suit land and now they have become the owners and that the decree passed in favour of the father of the respondent-defendant in the earlier suit of 1991, is the result of fraud played upon them.

6. From the facts and the circumstances of the case, it is clear that no substantial question of law is involved. Hence the appeal is dismissed.

CMP No. 675 of 2006.

7. Infructuous.

November 6, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**